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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,825	08/28/2003	Jack William Maegli	4039-0135P	6651
2292	7590	04/18/2006	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				MAHAFKEY, KELLY J
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/649,825	MAEGLI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kelly Mahafkey	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 01 February 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 4-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1, 4-16 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/11/03</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

Amendments made February 2, 2006 have been entered.

Claims 1 and 4-11 are pending.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4-6, and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gamay et al. (US 5935634). The references and rejection are incorporated herein and as cited in the office action mailed December 22, 2005. The only amendment to the claims is in regards to claims 1 and 11.

The amendment in claim 1 is the addition of the claim 3 limitations into claim 1; it is noted that the rejection addressed the limitations originally presented in both claims 1 and 3.

The amendment of claim 11 replaces the use of soybean oil with vegetable oil. As stated in the previous office action, Gamay discloses that the cheese consists of about 20% casein (protein), about 17% of glycerin (polyol plasticizer), 2-15% lactates (non-polyol plasticizer), including sodium lactate, about 20% hydrogenated oil, including

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vegetable and partially hydrated oil, about 8% salt, and flavoring in type and a level to suit the desired taste. Refer specifically to Column 5 lines 39-57, Column 6 lines 40-43 and 53-58, and Examples 1, 3, 4, 7, and 8. Gamay is silent to the addition of 35% flavoring of a vegetable component. It would have been obvious, however, to include any desirable flavoring in any amount, such as vegetable flavoring, depending on the desired taste in view of Gamay (Column 6 lines 40-43).

Claims 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gamay et al. (US 5935634) as applied to claims 1, 4-6, and 8-10 above, and further in view of Rule et al. (US 4232050). The references and rejection are incorporated herein and as cited in the office action mailed December 22, 2005.

### ***Response to Arguments***

Applicant's arguments, see amendments filed February 2, 2006, with respect to the 102(b) rejection of claims 1 and 2 have been fully considered and are persuasive. The 102(b) of claims 1 and 2 has been withdrawn.

Applicant's arguments filed February 2, 2006 concerning the 103(a) rejections of claims 1-11 have been fully considered but they are not persuasive.

Regarding applicant's argument concerning the teachings of Gamay, applicant is referred to the 103(a) rejection mailed February 2, 2006 in which the examiner states that Gamay does not teach a water activity level of less than or equal to 0.43, but rather that Gamay teaches a method for modifying the water activity level (including one that

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was notoriously well known in the art at the time the invention was made, Gamay Column 2 lines 53-58) and provides motivation to do so (i.e. shelf stability Gamay column 3 lines 12-20). Furthermore, as Gamay specifically discloses products with water activities below 0.86 (Column 4 line 49), this would naturally lead one of ordinary skill in the art to encompass an amount of below 0.50 as well.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kelly Mahafkey  
Examiner  
Art Unit 1761



KEITH HENDRICKS  
PRIMARY EXAMINER